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August 28, 2017

FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between)	
County of Sacramento)	
Employer)	
and)	Salary Surveys
Sacramento-Sierra's Building and)	Factfinding
Construction Trades Council)	PERB Case No: SA-IM-172-M
Union)	

APPEARANCES:

For the Employer: Krista C. Whitman, Assistant County Counsel
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For the Union: David A. Rosenfeld, Attorney
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FACTFINDING PANEL:

Appointed by the Employer: Dennis R. Batchelder, Consultant
The Batchelder Group

Appointed by the Union: Todd Schiavo, Business Agent
U.A. Local Union 447, Plumbers & Pipefitters

Neutral Chairperson: Paul D. Roose, Arbitrator and Mediator
Golden Gate Dispute Resolution

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

In June 2015, the parties signed off on a collective bargaining agreement (CBA). The term of the agreement is July 1, 2013 through June 30, 2018. The salary portion of the CBA includes the following pay adjustments:

First pay period following ratification: 4% increase

June 26, 2016: 4% increase

June 25, 2017: CPI-based increase, with a minimum of 2% and a maximum of 5%

The CBA also includes a “Salary Survey” section. Section 7.2, the genesis of the instant dispute, reads as follows:

Upon request of the Building Trades, but no sooner than January 2016, the parties agree to commence a salary survey for the classes of Electrician, Plumber, Carpenter and Painter.

The initial meeting(s) shall include a discussion regarding the jurisdictions and the classifications utilized by such jurisdictions, with the goal of identifying classifications with an equally comparable scope of work.

The County and the subcommittee selected by the Building Trades (to be comprised of equal members) shall meet regularly on the conduct of this survey. The Building Trades subcommittee shall be made up of one negotiating committee member from each craft and no more than two business representatives. The County team shall include no more than a total of six representatives.

The parties endeavor [sic] to complete the survey no later than May 2016. Following completion of the survey, the parties agree that upon the request of the Building Trades, the parties shall reopen this agreement for the sole purpose of negotiating the results of the survey.

In the event the parties do not reach consensus on the jurisdictions and classifications to be surveyed, the parties agree to submit their separate salary surveys to a joint Labor Management Panel for resolution. The Joint Panel is to be comprised of the Sacramento County Director of Labor Relations and another County Representative and two (2) Business Agents from the Sacramento Sierra’s Building and Construction Trades Council. In the event the parties do not reach consensus on the jurisdictions and classifications to be surveyed, the parties agree to submit their separate salary surveys to a neutral fact finding panel consistent with Government Code 3505.4

The parties selected their committees and met numerous times in 2016. Both sides developed their own lists of comparable jurisdictions and comparable classes within those jurisdictions. The parties were unable to achieve consensus, and moved into the fact finding phase of the salary survey agreement. They contacted the California Public Employment Relations Board (PERB). PERB certified the matter for

factfinding. On May 12, 2017, PERB notified the undersigned that the parties had selected him to be the chair of the factfinding panel in this matter pursuant to Government Code 3505. A hearing was set by mutual agreement on June 28, 2017 in Sacramento, CA.

A threshold procedural issue was presented at the outset of the hearing. The parties disagreed as to the effect of any report that might be issued by the panel. The Union took the position that any decision made by the factfinding panel would be binding on the parties, based on the language in the parties' CBA. The Employer took the position that any decision by the panel would be a recommendation and would not bind the parties.

Ultimately, the parties agreed that the panel would issue a report in the same factfinding format as normally employed by the chairperson. That report would conclude with a findings and recommendations section. With this understanding, the parties agreed to proceed with the substantive portion of the hearing, reserving their rights to argue the effect of the report once issued.

The panel took on-the-record evidence and argument from both sides concerning the substantive matter in dispute. The parties also requested that the neutral factfinder act as a mediator in assisting the parties in off-the-record discussions to attempt resolution of the matter. Accordingly, confidential mediation was conducted on the hearing day. The factfinding panel also convened by teleconference on several occasions after the date of the hearing, making further efforts to settle the dispute. Settlement efforts proved unsuccessful. The parties then submitted their final proposals and arguments for the panel's consideration.

Under amendments to the Meyers-Miliias-Brown Act that went into effect on January 1, 2012, and as amended again on January 1, 2013, local government employers (cities, counties, and special districts) and unions in California have access to factfinding in the event they are unable to resolve contract negotiations. At the request of the exclusive representative, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer. In accordance with regulations put in place by the California Public Employment Relations Board (PERB), the exclusive representative can request factfinding either after mediation has failed to produce agreement or following the passage of thirty days after impasse has been declared. Each party appoints a member of the

factfinding panel. A neutral chairperson is selected by PERB unless the parties have mutually agreed on a neutral chairperson.¹

Under the statute, the factfinding panel is required to consider, weigh and be guided by the following criteria in formulating its findings and recommendations:

- 1) State and federal laws that are applicable to the employer
- 2) Local rules, regulations, or ordinances
- 3) Stipulations of the parties
- 4) The interests and welfare of the public and the financial ability of the public agency
- 5) Comparison of the wages, hours and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours and conditions of employment of other employees performing similar services in comparable public agencies
- 6) The consumer price index for goods and services, commonly known as the cost of living
- 7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received
- 8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations

The Parties Used Different Methodologies to Arrive at Their Jurisdiction Proposals

The Union read the agreement in Article 7.2 as a mandate to first compare job duties in like classifications throughout public sector employment in California. The Union created a scoring system for each craft based on job duties listed in the Sacramento County jobs specifications.²

¹ PERB has also determined that Government Code 3505.4 factfinding is available to parties to resolve impasses over unresolved bargaining issues that arise during the term of a CBA. Since the parties' CBA had not expired, it is likely that PERB viewed factfinding as an appropriate process for this dispute under this broader interpretation of the statute.

² The Union initially added additional duties to the Sacramento County list based on a polling of its own members in each Sacramento County craft. When the Employer objected to this method, calling it not "objective," the Union reverted to utilizing the factors contained in written job descriptions.

The Union selected jurisdictions beginning initially with counties, then added cities and special districts if needed for geographical balance. The Union attempted to locate jurisdictions within counties traditionally used by the Employer.

Later in the factfinding process, the Union dropped all jurisdictions that were not included in the County's traditional list of fifteen comparators. The Union agreed to all of the jurisdictions that appeared on both the Employer's and Union's lists. Then the Union added, from the County's traditional list, those that scored highest on the Union's ranking. The Union's new goal was to compile a list for each craft that had six comparator jurisdictions.

Gregory Anderson works as an electrician for the County. He has been assigned to the Sacramento International Airport for the past twenty-four years. He helped design and implement the Union's salary survey proposal. He and the rest of the committee designed a scoring system for each craft based on the working environment and required skills. For example, the electrician craft was given one point each for working in airport, correctional facilities, wastewater treatment, water resources, and buildings. The Union also gave the electrician craft points for specific listed job duties, such as "troubleshoots circuits and equipment" and "reads, interprets, and modifies blueprints, schematics, etc."

Mr. Anderson was involved in the negotiations in 2015 that led to the inclusion of Article 7.2. Neither he nor any other witness from either side testified to what was stated across the table about the meaning of 7.2.

The Employer's methodology was based on its historical practices. The County traditionally chooses from a list of fifteen jurisdictions for all bargaining units. On the list are thirteen counties, the City of Sacramento, and the State of California. The County considers the "local market" to be five counties contiguous to Sacramento County (San Joaquin, Solano, Placer, Yolo and El Dorado) plus the City of Sacramento and the State of CA. The expanded market includes eight additional counties: Alameda, San Francisco, Contra Costa, Fresno, Riverside, San Bernardino, Santa Clara and Ventura. Four of those counties are, by design, more populous than Sacramento County, and four are less populous.

The County utilizes the expanded group when the classification is a professional job title that recruits from a wider geographical area. The County also adds jurisdictions from the expanded area when insufficient classification matches exist in the local area.

The County determined through its initial inquiries that the local market for building trades crafts included insufficient matches to create a valid sample. Accordingly, the County examined its expanded market to create its proposal.

Using this approach, the County initially came up with eleven jurisdictional matches for electrician and plumber, and ten for plumber and carpenter. In its final proposal to the panel, the County reduced its list to the same eight jurisdictions for all four crafts.

Rebecca Stuckert is a human resources manager for the county. She designed and compiled the County's survey for the building trades. Ms. Stuckert testified that she spoke to human resources counterparts in other jurisdictions, and the County's own subject matter experts, to validate that a comparison classification had job duties at a comparable level to the classification in Sacramento County.

She testified that the County considers 30 to 40 percent of the comparator jurisdictions a statistically valid sample. For fifteen jurisdictions, this equals five to six as a minimum number. However, the County prefers a larger sample.

Ms. Stuckert testified that she completed her assignment of preparing the list of jurisdictions by using the same methodology as she used "one hundred times before." The language in Article 7.2 did not impact the manner in which she created the County's survey proposal, she testified.

The Parties' Positions

Through the factfinding hearing and several factfinding panel conferences, the parties were successful at significantly narrowing the differences between their proposals. The remaining differences are captured in the following charts, prepared by the factfinding panel chairperson. Entries in *italics* indicate differences between the parties' proposals.

Carpenter	County Proposal	County Class	Union Proposal	Union Class
	City/County of San Francisco	Carpenter	City/County of San Francisco	Carpenter
	County of Santa Clara	Carpenter	County of Santa Clara	Carpenter
	County of Alameda	Carpenter	County of Alameda	Carpenter
	State of CA	Carpenter II	State of CA	Carpenter II
	County of Fresno	Maintenance Carpenter	County of Fresno	Maintenance Carpenter
	County of Contra Costa	Carpenter	County of Contra Costa	Carpenter
	<i>County of San Bernardino</i>	<i>Carpenter</i>		
	<i>City of Sacramento</i>	<i>Carpenter</i>		

Plumber	County Proposal	County Class	Union Proposal	Union Class
	City/County of San Francisco	Plumber	City/County of San Francisco	Plumber
	County of Santa Clara	Plumber	County of Santa Clara	Plumber
	County of Alameda	Plumber	County of Alameda	Plumber
	City of Sacramento	Plumber	City of Sacramento	Plumber
	State of CA	Plumber II	State of CA	Plumber II
	County of San Bernardino	Plumber	County of San Bernardino	Plumber
	<i>County of Fresno</i>	<i>Maintenance Plumber</i>		
	<i>County of Contra Costa</i>	<i>Steamfitter</i>		

Electrician	County Proposal	County Class	Union Proposal	Union Class
	City/County of San Francisco	Electrician	City/County of San Francisco	Electrician
	County of Santa Clara	Electrician	County of Santa Clara	Electrician
	County of Alameda	Electrician	County of Alameda	Electrician
	City of Sacramento	Electrician	City of Sacramento	Electrician
	State of CA	Electrician II	State of CA	Electrician II
			<i>County of Riverside</i>	<i>Maintenance Electrician</i>
	<i>County of Contra Costa</i>	<i>Electrician</i>		
	<i>County of San Bernardino</i>	<i>Electrician</i>		
	<i>County of Fresno</i>	<i>Maintenance Electrician</i>		

Painter	County Proposal	County Class	Union Proposal	Union Class
	County of Santa Clara	Painter	County of Santa Clara	Painter
	City/County of San Francisco	Painter	City/County of San Francisco	Painter
	City of Sacramento	Painter	City of Sacramento	Painter
	County of Alameda	Painter	County of Alameda	Painter
	State of CA	Painter II	State of CA	Painter II
	County of San Bernardino	Painter I	County of San Bernardino	Painter
	<i>County of Fresno</i>	<i>Maintenance Painter</i>		
	<i>County of Contra Costa</i>	<i>Painter</i>		

The Union’s Job Duty Rating of the County’s Added Jurisdictions

The Union, as noted above, approached the survey process by rating agencies based on each craft’s job duties. The following are the Union’s ratings of the disputed jurisdictions, in a chart compiled by the factfinding chairperson. These ratings are based on the “written job description” matrices marked as Exhibit 2 in the hearing.

Carpenter	Jurisdiction	Union Rating	Lowest Rating Included in Union's Proposal
	County of San Bernardino	6	8 (County of Santa Clara)
	City of Sacramento	7	

Plumber	Jurisdiction	Union Rating	Lowest Rating Included in Union's Proposal
	County of Fresno	8	9 (County of San Bernardino, City/County of San Francisco, City of Sacramento, State of CA)
	County of Contra Costa	8	

Electrician	Jurisdiction	Union Rating	Lowest Rating Included in Union's Proposal
	County of Contra Costa	3	5 (County of Riverside, County of Santa Clara, City of Sacramento and State of CA)
	County of San Bernardino	5	
	County of Fresno	4	

Painter	Jurisdiction	Union Rating	Lowest Rating Included in Union's Proposal
	County of Contra Costa	11	4 (County of San Bernardino)
	County of Fresno	5	

POSITIONS AND CLOSING ARGUMENTS OF THE PARTIES

The Union: The Union contends that the panel must find in totality for one party or the other, “baseball-style.”

The Union argues that the County defaulted by failing to participate in good faith in the process outlined in Article 7.2. The County improperly relied on the same method used for all other bargaining units, despite the language in 7.2. The Union, in contrast, spent hundreds of hours analyzing comparable jurisdictions and creating analytic matrices based on the contract language requirement.

Finally, the Union contends that the Employer has “gerrymandered” its final survey composition proposal to guarantee little or no wage increase for the Sacramento County crafts employees.

The Employer: The County asserts that its final proposal is well-balanced and provides a fair comparison to the building trades crafts in Sacramento County. The County’s list includes a mix of bay area, central valley, and southern CA counties, plus the City of Sacramento and the State of CA. It also provides a mix of larger and smaller agencies.

The Employer argues that each of the chosen jurisdictions has a classification match for each of the crafts. Therefore, this creates a consistent set of jurisdictions that can be used for this and future trades salary surveys.

The County questions the validity of the Union’s classification scoring system. In many areas, it is inaccurate and unreliable.

The Employer asserts that it would never use different comparison jurisdictions for classifications within the same bargaining unit, since that would lead to salary inconsistencies.

PANEL FINDINGS

Statutory Factors Three and Five Are Relevant in This Dispute: Government Code 3505.4 has limited applicability to the instant dispute. The vast majority of disputes that go before a MMBA factfinding panel concern an impasse over bargaining of wages, hours, and terms and conditions of employment coinciding with the expiration of a CBA. In a smaller subset of cases, MMBA factfinding addresses a limited contract reopener rather than an expired or expiring agreement.

The instant impasse concerns a step in the bargaining process preliminary to actual negotiations. It concerns a dispute over how to collect data relevant to a potential salary reopener or successor bargaining. Despite this divergence from the typical 3505.4 dispute, the parties wrote the factfinding process into their CBA. When they could not reach agreement on how to conduct a salary survey, they

contacted PERB. PERB certified the dispute for factfinding. Hence, the panel will make its best effort to apply the factfinding tool and criteria to this disagreement.³

Only two of the above-listed 3505.4 factors apply to this dispute. Factor #3, the “stipulations of the parties,” has relevance. Article 7.2 can logically be viewed as a “stipulation” that the parties will utilize certain criteria in crafting their salary surveys.

Factor #5 is also pertinent. It posits external comparability as a guiding factor for a factfinding panel. It includes key phrases such as “conditions of employment,” “similar services,” and “comparable public agencies” as appropriate comparison points.⁴

The panel will apply both these statutory factors in arriving at its findings and recommendations.

The Language of Article 7.2 is Ambiguous and Provides Only the Most General Guidance to the Parties in this Dispute: Neither side presented bargaining history on Article 7.2. The panel was handicapped by not having first-hand accounts of why this language was negotiated and what the parties told each other at the bargaining table about what they believed this language meant. Was the intent of the parties to use the county’s traditional jurisdictions and select from among them the ones with the closest classification match? Was it the intent of the parties to start afresh and locate public sector jurisdictions that had a high value of “comparable work?” Or was this 7.2 agreement merely another way of stating the County’s traditional methodology? The record did not shed light on the origins of the 7.2 language.

Without bargaining history, the panel is left with the task of attempting to derive a coherent meaning from the ambiguous language in the article. It must do so without the benefit of knowing the bargaining background.

The Union’s case relies heavily on its interpretation of the disputed language. It reads into the agreement an understanding that an “equally comparable scope of work” is the over-riding consideration

³ Nothing in the hearing record led the panel to conclude that the configuration of the salary survey would have any binding effect on the parties’ salary negotiations. No evidence was presented that the parties have an agreed-upon procedure for applying salary surveys to generate salary adjustments for bargaining unit members. Certainly, the record was devoid of any evidence that the parties have agreed to a survey-based formula that results in automatic increases.

⁴ This dispute involves designing a salary-only survey. Neither party referred to non-salary benefits in its proposals or presentations. The undersigned neutral cautions both sides that total compensation is a key element of 3505.4 factfinding, and would be a critical factor examined by a panel if and when the parties reached that point in the process.

in creating a salary survey. The County’s point of view is that this paragraph simply describes and affirms the method traditionally used by the County in salary surveys.

A careful reading of the language reveals a more nuanced construction. The key sentence implies that the parties will first identify “the jurisdictions” and then identify the “classifications utilized by such jurisdictions” that correspond to Sacramento County’s “scope of work.”

This reading is consistent with the County’s practice of choosing jurisdictions first, then determining if comparable classes exist within those jurisdictions. It also aligns with the Union’s decision to avoid private sector comparators and jurisdictions outside of California. This interpretation is consistent with the approach ultimately taken by the Union when it set aside non-traditional jurisdictions and attempted to work within the County’s traditional universe of comparators.

However, the language infers that the parties were agreeing to something different than “business as usual.” The undersigned neutral assumes that the parties had some reason to identify “equally comparable scope of work” as a factor to be explicitly referenced in Article 7.2. No other factor – geographical location, population in comparison jurisdictions, consistency across crafts – rose to the level of deserving mention in the parties’ agreement. “Equally comparable scope of work” is referenced as “the goal.” This was the parties’ stipulation reached through collective bargaining.

The Union created a matrix that compared job duties of each of the Sacramento County crafts to those of possible comparator jurisdictions. The County did take issue with a few of the items included in the Union’s matrix. However, the Union’s job duties matrices stand largely un rebutted.

Government code 3505.4, item 5, requires that parties consider more than just job duties in conducting a salary survey. The key phrase in that clause is “comparable public agencies.” The County has used employer comparability as the starting point for its analysis. It has determined the comparability of the agencies first, followed by a less detailed analysis of the varying job duties of comparison classes.

The County’s technique of considering geographical proximity to Sacramento County, regional economic characteristics, and relative size of the comparison jurisdictions is consistent with the statute. The comparability of the agencies is indeed an important factor. It does not, however, over-ride the stipulated issue of job duty comparison.

No Persuasive Argument Was Made That Identical Jurisdictions Must Be Surveyed for All Four Crafts: The County has argued the importance of using identical jurisdictions for each of the four

crafts. Its argument that doing otherwise could lead to salary “inconsistencies” does not withstand scrutiny.

The four crafts involved – plumber, electrician, painter, and carpenter – are paid differently.⁵ They are, by their very nature, separate and distinct “crafts” with different training, apprenticeship programs, and tools. Presumably, the County wants to pay of each of these classifications to reflect the market. No evidence was in the record that the County adjusts building trades salaries in relation to the salaries of other Sacramento County crafts.

Therefore, the panel sees no compelling reason for the County to use identical jurisdictions to measure the market for each of the four crafts.

The Employer’s Survey for Carpenter Conforms More Closely to the Statutory Factors:

Having set aside the County’s argument that all the surveys must use identical jurisdictions, the panel now undertakes the task of examining each of the four craft survey proposals separately.

For the carpenter craft, the Union has put forward five of the thirteen counties that are traditionally in the County’s traditional list of comparators, plus the State of CA. The County has proposed these same six jurisdictions, plus the County of San Bernardino and the City of Sacramento.

Both these proposals are reasonable and conform closely to the statutory factors. They both have a large enough group of comparators to be statistically significant by the County’s metric. There is also a logic in including the City of Sacramento in the survey, as one of Sacramento County’s prime public-sector competitors for recruiting and retaining carpenters.

Since the two jurisdictions added by the County have scores relatively close to those proposed by the Union, the panel examined the underlying data for those two jurisdictions. The Union did not credit the San Bernardino carpenter with “operates wood working machinery, such as sanders, planers, joiners, and power saws in the construction of wooden articles or structures.” However, the San Bernardino carpenter class specification includes “Operates and maintains circular saw, bandsaw, jointers, shapers and other power hand tools.” These descriptions seem close enough to be considered a match.

The Union also gave San Bernardino County carpenter a lower score for not including “installs and repairs doors, locks, closers, and door hardware such as exit and panic devices” in its job description.

⁵ Carpenter and painter are currently paid the same hourly rate in Sacramento County. Plumber and electrician are currently paid the same, at a higher rate. No evidence was in the record that this pairing of pay rates was anything other than coincidence.

However, the carpenter class specification for that jurisdiction includes “May repair, service and install locks and locking devices” and “Erects, maintains and repairs various types of buildings, sheds, scaffolds, forms, frames, fences, counters, cabinets, doors, partitions, floors and other structures.”

With these additions, the San Bernardino carpenter, added by the County, scores as high as Santa Clara County, included in the Union’s survey proposal.

The Union scored the City of Sacramento carpenter as a “7”. One factor that downgraded this comparator was the standard of “Interpret, understand, and work from blueprints, shop drawings, and manuals.” However, in the City of Sacramento class specification is the following: “Assignments are normally made orally or in the form of rough sketches or blueprints.” The strong implication of this description is that the carpenter must be able to “interpret, understand, and work from” these sketches and blueprints.

With this addition, the City of Sacramento carpenter ranks as high on the Union matrix as the County of Santa Clara, already included in the Union’s proposal.

Based on this closer examination of the comparator job descriptions, the panel sees the job duties as roughly comparable. Other factors being equal, the panel finds that an eight-entity survey is superior to a six-entity survey. A larger survey tends to smooth out the impact of particularly high or particularly low comparators. The panel therefore recommends adoption of the County’s carpenter survey jurisdictions.

The Employer’s Survey for Plumber Conforms More Closely to the Statutory Factors: Like the painter dispute, the difference on the plumber survey is relatively minor. Both have included four counties in common, plus the City of Sacramento and the State of CA. The County adds to this list of six comparators two other counties.

Since the two jurisdictions added by the County have scores within one point of those proposed by the Union, the panel examined the underlying data for those two jurisdictions.

The Union down-rated the County of Contra Costa for not including “replaces, installs, & maintains gas, water & sewer pipes” in its job duties. However, the class specification for the jurisdiction includes the following: “Repairs, maintains, and installs...steam lines...water lines.” This description appears to encompass most if not all of the duties in the comparison description.

Fresno County also received a lower score, in part due to not receiving credit for “cuts, reams & threads pipe.” However, the County of Fresno class specification lists under “minimum qualifications” experience “repairing piping.” This is likely a generic expression that encompasses the particular skills in the comparator job description.

The Union’s proposal is reasonable and also conforms to the statutory factors. However, the balance tips in this instance to the County’s proposal because the Union may have overlooked certain job duties in the County’s proposed jurisdictions. The County’s proposal also has the advantage of a broader group of comparators.

The panel recommends the adoption of the County’s plumber survey jurisdictions.

The Union’s Survey for Electrician Conforms More Closely to the Statutory Factors: The electrician survey was the one that reflected the largest divergence between the parties’ proposals. Both the County’s and Union’s proposal have in common three counties, plus the City of Sacramento and the State of CA. The Union adds to this list the relatively high-scoring Riverside County, a county that has been part of the traditional fifteen Sacramento County comparative entities.

To the five in-common jurisdictions, the County adds three other counties – Contra Costa, San Bernardino and Fresno. San Bernardino rates high enough to have been included on the Union’s list.

The County’s proposal is reasonable and conforms in large part to the statutory factors. However, the County’s inclusion of Contra Costa County tips the recommendation away from the County to the Union in this instance. Contra Costa County rated a three on the Union’s scale, lower by two than any other included in the Union’s group.

Of particular note is the fact that Contra Costa’s class specification does not include “may supervise helpers.” In contrast, Sacramento County and three of the five jurisdictions that appear on both lists include this specification. Included in those three are the State of CA and the City of Sacramento, direct local market competitors. The undersigned views this as a potentially significant difference, and should disqualify Contra Costa County from consideration for this craft.

The panel thereby recommends the adoption of the Union’s electrician survey jurisdictions.

The Employer’s Survey for Painter Conforms More Closely to the Statutory Factors: The differences between the two proposals for painter are narrow. Like the plumbers, both have included four

counties in common, plus the City of Sacramento and the State of CA. The County adds to this list of six the same two other counties it adds in the plumber dispute: Contra Costa and Fresno.

Both counties added by the County score higher in the Union's matrix than one of the jurisdictions included on the Union's list. One of those added– Contra Costa – scores significantly higher. The other – Fresno – receives a score of five, higher than the County of San Bernardino's score of four. The County's list includes higher scoring entities than does the Union's list. While it could be argued that this was not the County's intent in constructing this list, the fact is that is how it turned out.

The Union's proposal is reasonable and conforms to the statutory factors. However, the balance tips in this instance to the County's proposal because it has the advantage of a broader group of comparators.

The panel recommends the adoption of the County's painter survey jurisdictions.

SUMMARY PANEL RECOMMENDATIONS

The factfinding panel recommends that the parties adopt the Union's survey proposal for electrician and the Employer's survey proposal for carpenter, plumber and painter.



Paul D. Roose, Neutral Chairperson

Date: August 28, 2017

/s/ _____

Todd Schiavo, Union-appointed Panel Member

Date:

_____ I concur with the Recommendations

 x I dissent from the Recommendations (see attached explanation)

/s/ _____

Dennis Batchelder, Employer-appointed Panel Member

Date:

_____ I concur with the Recommendations

 x I dissent from the Recommendations (see attached explanation)

Partial Agreement and Partial Dissent by Member Schiavo

The Building Trades Council which I refer to as the Union appreciates the effort that the Mediator went through to try to understand the parties' positions and to reach a fair resolution. In part, I agree and, in part, I disagree.

To reiterate our position, the agreement which we reached required that the parties find the "jurisdictions with equally comparable scope[s]." This was the contractual agreement between the parties and was reached after extensive negotiations. This must guide the Mediator. Throughout this proceeding the County has ignored and repudiated this agreement.

I continue to believe that our matrix, Exhibit 2A, accomplishes the contractual agreement between the County and the Union. Nonetheless, I am prepared to concur with the Mediator's recommendation with respect to the Electricians and the Carpenters. I agree because he has reached a result which finds jurisdictions which substantially comply with the parties' agreement.

With respect, however, to the Painters and the Plumbers, I disagree.

The Mediator has, misconstrued Exhibits 1A and 2A submitted by the Union. Exhibit 1A was a document that was initially prepared by the Union by comparing the job duties of the four crafts in the County of Sacramento. What the Union did was evaluate both the written job descriptions and the unwritten job duties of the four crafts. The Union carefully evaluated each craft and determined that the County's descriptions were sometimes inadequate because the work has been transformed so that the four crafts perform additional or different duties throughout the County. The Union included those unwritten duties after careful evaluation. The Union then prepared Exhibit 1A which was a matrix in which the Union compared what had been determined were the duties, with the written duties in other jurisdictions throughout California. To avoid the problems of determining the unwritten duties in the other jurisdictions, the Union did not evaluate any potential unwritten or undescribed duties in the other jurisdictions. Exhibit 1A, then, was a compilation scoring a comparison of the duties performed by the four crafts in Sacramento County (written and unwritten), along with the written job descriptions in the other jurisdictions.

When the Union submitted this to the County, the County vigorously objected saying it was much too subjective to consider what the Union thought were the accurate job duties of the four crafts in Sacramento County. The Union then evaluated the County's position and determined that it would be more straightforward and easier simply to compare written job descriptions. The Union then modified the matrix and prepared Exhibit 2A.

Exhibit 2A is a strict comparison of the written job descriptions in the County of Sacramento with written job descriptions in the other jurisdictions. The Union then scored them appropriately. When this was presented to the County, the County did not object to matrix 2A, at least on the prior basis because the Union had accomplished what the County had asked the Union to do by eliminating comparisons based upon what the Union thought were an accurate description of the job duties but which we not contained in the written job descriptions.

All of this was presented to the Mediator at the hearing. The Mediator took the submissions of our advocates and reached a proposed resolution. As noted, I have concurred with respect to the proposed resolution to the Electricians and the Carpenters because I think it largely achieves this purpose.

The Mediator, however, has substantially misunderstood the difference between Exhibits 1A and 2A with respect to the Painter and the Plumber. He has done so in part because of the misleading position of the County.

The Mediator has recommended including Fresno County. I object. What the Mediator has done is thought that Fresno County rates are 12 for the Plumbers and 2 for the Painters. The problem is, and this is why I dissent, that is he is relying on Exhibit 1A and not Exhibit 2A.

On Exhibit 2A comparing again, as requested by the County, the actual job descriptions Fresno County Plumber is reduced to an 8 for the Plumbers. When we look at Exhibit 2A, however, there are other jurisdictions that have higher ratings than Fresno County.

As to the Plumbers, the Fresno County job description is simply a maintenance plumber. This is a basic plumber who only does maintenance work. The County's job description (let alone the actual duties) is much more complicated and that is why the Fresno County rating is lower on Exhibit 2A. The fact is that Los Angeles County rated a 10 and Orange County rated a 10 on Exhibit 2A, considerably higher than Fresno County. Either one of those jurisdictions should have been selected.

As to the Painters, on Exhibit 2A, the painters in Fresno County are also just maintenance painters. As a result, they rated very low on Exhibit 2A at a 2. The Mediator should have instead chosen the City of Los Angeles which rated an 8 on Exhibit 2A, much in excess of Fresno County which was very low at 2.

For these reasons, I dissent because our Matrix 2A would lead to a considerably different result in the terms of choice of jurisdiction with an equally comparable scope.

I also dissent because what the County did was simply pick and choose by looking at the wage rates that would be achieved by selecting Fresno County. I recognize that the wage rates are irrelevant to the contractual language. As noted, however, the County has ignored the contractual language. The County's position, however, was based upon its analysis of the wage rates and the County suggested Fresno County because it knew that this would reduce the wage rates which ultimately would be the basis of negotiations for the Union and the County. The Mediator has fallen into this trap by ignoring the County's deliberate manipulation of the selection process to create a result which is unfair and violates the contractual language upon which the Mediator was called upon to base his decision.

I dissent and believe that as to the Plumber the Mediator should use Los Angeles County (alternatively Orange County). As to the Painter, he should adopt Los Angeles City.

I recommend Los Angeles County for the Plumber because Los Angeles County rates a 10, while Fresno maintenance plumber rated only an 8. As to the Painter, I recommend Los Angeles City because it rated an 8 out of a possible 12, while Fresno County rated only a 2.

I have also reviewed the dissent submitted by Ms. Whitman. It is an unnecessary and unprofessional attack upon the Mediator, the Union and the entire process including the governing contract language.

I'd like to take the time in this dissent to address Ms. Whitman's position because it is very unprofessional. Ms. Whitman attempts to discredit the Union and the method by which we established out matrices. As noted above, the Union did modify Matrix 1A and submitted Matrix 2A based upon the County's objections. However, Ms. Whitman is asserting that as workers and individuals, we are untrained and unable to assemble and create any meaningful document which complies with the contractual language of selecting "jurisdictions with an equally comparable scope." The fact is that we spent hundreds and hundreds of hours creating Matrix 1A and hundreds of hours again creating Matrix 2A. Thus was done thoroughly and carefully. The County has not offered one instance where the Union incorrectly scored the job descriptions of the County or of the other jurisdictions.

Rather, the County has argued, as Ms. Whitman has stated, that the document was too vague and too much for them to review. This is hardly an excuse for complying with the contract. The fact is that a review of our Matrix 2A would have been very simple. The County simply could have checked perhaps the 15 or 20 top jurisdictions in order to determine whether the Union had accurately scored those jurisdictions. The fact is the Union went far and beyond what was necessary by checking virtually all of the jurisdictions. The County could have ignored most of the jurisdictions that scored low and the above method would have reflected the fact that the Union did, in fact, a thorough and competent job.

The County stated that the data that was supplied was just too cumbersome for the County to analyze. All of the data that was submitted by the Union can easily be imported to a regular database and used in conventional ways had the county expert chose go that way. It also is a simple process to sort and select information from the "flat file" and analyze. This is a familiar data base tool probably used by the County in all kinds of applications. In effect the Unions proposal gives the County an effective tool as a template for addressing similar situations that may arise within the County should they accept the change from old ways to new technology.

There is never too much information. The lack of information will lead us to an uninformed evaluation or decision.

The County made a point as to their use of trained personnel to do the work on the market survey but those "trained" personnel were unable to digest the information that was handed to them and make recommendations based on the provided data or to in any way to empirically justify the method in which the County came to its conclusions. The fact that Ms. Stuckert had enough experience and she could have done the exact evaluation we did. She did not.

The fact is that the County has throughout rejected the procedure agreed to by the parties. The County, through Ms. Whitman, has continued to insist that the only jurisdictions that could be considered were those that were part of the County Full Market Survey. The County has refused to veer or deviate from that survey. That is contrary to the language of the Agreement.

Ms. Whitman's attack on our method is more personal than based on an analysis of the work we did, as well as the requirement of the contract.

We believe ultimately Ms. Stuckert agreed with our position that we had located jurisdictions that were equally comparable. She simply was adhering to the County's position that that was irrelevant because the County was entitled to stick with its own jurisdictions listed in its Full Market Survey.


The Council submitted a full and thorough brief to the Mediator, outlining all of these positions. I ask that that be made part of the record and the Mediator re-read our brief.

In my view, the County's refusal to accept the contractual language and to attempt to locate "jurisdictions with an equally comparable scope" will lead this matter to go further. This will either go before an Arbitrator, PERB or some other jurisdiction.

In summary, I ask that the Mediator change his decision and incorporate Los Angeles County for the Plumbers (or Orange County) and Los Angeles City for the Painters. This is consistent with the contract and with a proper interpretation of Matrix 2A.

The Mediator should also issue a decision specifically rejecting the County's unfounded attacks. The Mediator should also issue a decision making it clear that the County has clearly ignored the contractual language and has made no effort to find "jurisdictions with an equally comparable scope." I believe the County has been dishonest and deceitful. It has manipulated the process and the agreement

Dated: August 25, 2017


Todd Schiavo

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COUNTY OF SACRAMENTO'S DISSENT FROM FACTFINDER'S RECOMMENDATIONS

County of Sacramento v. Sacramento-Sierra's Building and Construction Trades Council

PERB Case No. SA-IM-172-M

The County of Sacramento dissents from the factfinder's recommendations. The County's two primary concerns are (1) the factfinder's reliance on the point system used in the Union's survey, and (2) the use of different jurisdictions for each of the four classes.

The factfinder should have given no credence to the Union's salary survey as it was not prepared in accordance with professional standards and inappropriately relied upon a system where "comparability points" were assigned based on randomly selected jurisdictions' written job descriptions. The point system method used by the Union was subjective and not based on valid job analysis criteria.

While the Union argued vociferously that the County was required to prepare a salary survey pursuant to the reopener that was somehow different than the County's standard method, the Union presented no evidence that the parties intended that the salary survey to be prepared should deviate from professional salary survey methods. As the County explained in its closing brief, the Union's survey does not come close to complying with professional standards and leads to faulty results. In his report, the factfinder indicates that "the Union's job duties matrices stand largely un rebutted." That is entirely inaccurate. Ms. Stuckert testified in detail as to the issues with their points system, which is based on written job descriptions, and the County argued in its closing brief that the use of written job descriptions lacks validity and is contrary to professional survey methods. The Union's point system was simply made up of whole cloth by Union members, based only on the written job descriptions of each of the jurisdictions the Union chose to compare, and should not be used to determine comparable jurisdictions.

As the County's witness Rebecca Stuckert testified, there is no "standard" method of writing job descriptions used by public entities, and jurisdictions vary widely as to the level of detail contained in their job descriptions. Thus, to reiterate an example addressed in the County's closing brief, the County's job for the electrician class lists "knowledge of theory of electricity." Although the Union's witness Mr. Anderson, an electrician, acknowledged that *all* electricians must have that knowledge, points were assigned only to those jurisdictions that had the same specific requirement, with the ludicrous result that a number of jurisdictions did not receive points for that category. In addition, the Union assigned points for the electrician class based on whether the other job descriptions were "similar to Sacramento County MQs", an entirely subjective comparison, and assigned one point each for the types of facilities where electricians might work, without providing any evidence or explanation as to why that is relevant. For the carpenter class, points were again subjectively assigned based on "similar to

Sacramento County MQs” and also for the types of facilities where work might be performed, again without explanation as to the relevance. In addition, points were assigned if the job description specifically states “reads and interprets work requests” and “lays out, cuts, fits and joins lumber and metal to construct the framework to a variety of structures”, tasks presumably all carpenters are required to do. However, San Bernardino, a County comparable jurisdiction which the factfinder eliminated due to a low point score, received no points because the requirement is not specifically stated in the job description.

These are just a few of the many, many examples of jurisdictions not receiving points based on invalid factors. On cross examination, Mr. Anderson was unable to explain exactly how jurisdictions were selected to review and points were assigned, as he only worked on the electrician class survey. The Union simply presented no evidence to establish that the survey was reliable and prepared in a consistent manner.

Furthermore, the factfinder’s recommendation uses different jurisdictions for each of the four classes. The County has *never* used different jurisdictions for classes within the same union, and simply cannot do so now. The primary objective of selecting appropriate comparable agencies is to establish a competitive pay structure while ensuring internal salary consistency and equity. The agencies are selected based on geographic proximity, employer size, and the nature of the services provided. The best practice is to survey the same agencies for all benchmarks, to avoid creating internal inequities. For example, if different agencies are surveyed for a particular benchmark of group of benchmarks and those agencies generally have higher rates of pay, it could result in those benchmarks being set at a higher salary creating an internal inequity. The use of the same agencies for all benchmarks within the County ensures that internal salary consistency and equity is maintained throughout the organization. In addition, consistency in the labor market used will ensure the agencies surveyed meet the same criteria in terms of geographic proximity, employer size, and the nature of the services provided.

The eight agencies used by the County in its proposal are those which provide the most comparable market data to the County and those the County competes with in terms of recruiting and retaining personnel. The comparable agencies proposed by the County as its final offer include six counties, similar in population compared to Sacramento County plus the City of Sacramento and the State of California. These comparable agencies ensure that sufficient market comparables will be found for key benchmark jobs within the County’s pay structure.